GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT.
(LABOUR)

ORDER

Bangalore, dated 28th March 1967

S.O. 688.—WHEREAS by State Government Order No. LMA 139 LLD 66, dated 7th April 1966 the Industrial Dispute between the workmen and the Management of Bharath Earth Movers, Ltd., Bangalore, was referred to the Industrial Tribunal, Bangalore, for adjudication ;

AND WHEREAS by Order No. LMA 595 LLD 66, dated 29th November 1966 the said Industrial Dispute was transferred to the Additional Industrial Tribunal, Bangalore.

AND WHEREAS before the said Additional Industrial Tribunal Bangalore, a complaint was made under Section 33 of the Industrial Dispute Act, 1947 (Central Act No. 14 of 1947), by Shriyuths Kamala Kannan and Sundaram Employees under the above said management, alleging that they were transferred on 10th May 1966, Kamalakannan from Machine Shop to the Material Preparation Department and M. Sundaram from Machine Shop to the Maintenance Department.

AND WHEREAS the said Additional Industrial Tribunal, Bangalore, adjudicated upon the said complaint and submitted its award to the State Government as required under Section 15 read with Section 33 of the said Act.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Mysore, hereby directs the publication of the said award in the *Mysore Gazette*.

[No. LMA 221 LLD 67]

By order and in the name of the Governor of Mysore

G. G. PUROHIT,
Under Secretary.

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BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE

Dated 20th February 1967

Present :

Sri V. C. Ramachandran, B.Sc., (Lond.), Bar-at-Law, Presiding Officer.

Complaint No. 17/66 *in A.I.D. No.* 12/66

Kamala Kannan, B. No. R. 721—281, Machine Shop, Barath Earth Movers, Ltd., Bangalore.
.. *Complainant.*

Vs.

The Management of Bharat Earth Movers, Ltd., Bangalore.
.. *Opposite Party.*

Complaint No. 18/66 *in A.I.D. No.* 12/66

M. Sundaram, B. No. 721—365, Machine Shop, Bharat Earth Movers, Ltd., Bangalore .. *Complainant.*

Vs.

The Management of Bharat Earth Movers, Ltd., Bangalore.
.. *Opposite Party.*

Appearances

For the Complainants : Sri A. Nagesh Rao, Advocate, Bangalore.

For the Opposite Party : Sri S. G. Sunderswamy, Advocate, Bangalore.

(*Government Order No. LMA* 139 *LLD* 66, *dated 7th April* 1966)

These two complaints were originally filed before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947. By virtue of an order passed by the State Government in G.O. No. LMA 595/LLE 66, dated 29th November 1966, these two complaints have been transferred to this Tribunal for disposal.

2. Both these complaints have been tried together by consent of Parties and common evidence has been adduced. The questions that arise for determination are also common in both these complaints and I, therefore, pass a common order in both these cases and a copy of the order will be filed in the records of the other case.

3. Both the Complainants, Kamalakannan and M. Sundaram are employees who were working in the Machine Shop Department of the Bharat Earth Movers, Ltd., as 'A' Grade Drill Press Operator and 'C' Grade Lathe Operator, respectively. Both of them were Members of the Trade Union of the Factory and active Members of the Hindustan Aircraft Employees' Association. They state that the employees of the Machine Shop of the Factory have several grievances about their service conditions and also about the ill-treatment meted out to them by one Subramanya Pillay who was the Assistant Superintendent of the Machine Shop. They had complained to the Management against the rude behaviour of the said Subramanya Pillay and requested the Management to conduct an Enquiry against him as the said Officer has been indulging in corrupt practices. While the matters stood at this stage, both these complaints were transferred on 10th May 1966, Kamalakannan from the Machine Shop to the Material preparation Department and M. Sundaram from Machine Shop to the Maintenance Department. According to the Complainants, these transfers are made at the instance of Subramanya Pillay with a view to harass them and victimise them on account of personal malice and vindictiveness. The Complainants submit that their transfer from the Machine Shop are unjust, illegal, *mala fide* and not in accordance with the Standing Orders. As a result of the transfers, their service conditions with regard to seniority and promotion have been seriously affected. It is submitted, therefore, that there is alteration in the conditions of service of the complainants during the pendency of an

Industrial Dispute and under Section 33 of the Industrial Disputes Act, they are entitled to an award cancelling the orders of transfers made by the Management and direct the Management to provide work for them in their original positions with all rights, privileges and back emoluments.

4. The Management, who is the Opposite Party, contend that the complaints are wholly misconceived, groundless and not maintanable in law. They alleged that there has been no alteration in the conditions of service of the Complainants and the transfers were made under the provisions of the Standing Orders. The complainants sought to raise an Industrial Dispute under Section 10 (1) (*d*) of the Industrial Disputes Act, but the Government refused to make any reference. The holding of the Office in the Trade Union is not a license for misbehaviour and disobedience to the orders of the superiors. The Management denied the allegations made with regard to the grievances of the employees of the Machine Shop. They admitted, however, that there have been discord between the Shop Superintendent and the Complainants. The Complainants have also been charged for misbehaviour and their service records according to the Management, have always been poor. The Management felt the retention of the complainants in the Machine Shop Department was not conducive to co-operative effort without which the maximum production could not be achieved. Taking all these into consideration, the Management, with a view to promoting efficiency and smooth working in the shop and in the best interest of the Company and employees themselves in the exigencies of work, transferred the Complainants from the Machine Shop Department without affecting the seniority or promotion prospects of the complainants. They denied that the transfers were made with a view to harass the complainants or to victimise them. In that view, they submit that the complainants are not entitled to any relief and on the other hand, disciplinary action had to be taken against them for sponsoring the illegal tool down strike which took place between 11th May 1966 and 13th May 1966. They pray that both the complaints be dismissed.

4. The following Issues were framed :—

" Is the transfer of the Complainant absolutely unjust, illegal and *mala fide* and is it calculated to victimise

him and is it not in accordance with the Standing Orders and in violation of Section 33 of the Industrial Disputes Act, 1947 ?

II. Is the transfer going to affect the Seniority of the complainant and promotion and therefore, there is alteration in the conditions of service of the complainant in contravention of Section 33 of the Industrial Disputes Act, 1947 ?

III. Is not this complaint maintainable since the transfer under the provisions of the existing Standing Orders.

IV. Is the complainant an undesirable employee ?

V. To what reliefs are the Parties entitled ? "

5. The complaints are filed under Section 33-2 (*h*) of the Industrial Disputes Act, 1947, according to which during the pendency of any proceeding in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to a workman concerned, in such dispute, alter in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding. Under Section 33-A, where an employee contravenes the provisions of Section 33 during the pendency of proceedings, any employee aggrieved by such contravention may make a complaint in writing and the Tribunal on receipt of such complaint shall adjudicate upon that complaint and submit its award to the Appropriate Government. From the reading of these sections, it is clear that Section 33-A can be invoked only if the following conditions are fulfilled :—

(1) There must be a proceeding pending before the Tribunal ;

(2) There should be an alteration in the conditions of service of the workman.

(3) Such alteration must be in contravention with the Standing Orders applicable to the workman.

In these two complaints, there is no doubt that an Industrial dispute is pending between the workmen and the Management

of Bharath Earth Movers Limited unconnected with the present complaint. But the question that arises for consideration is with regard to the other two *viz*. Whether the transfers of these two complainants were made in contravention of the Standing Orders and whether those transfers are resulted in the alteration of the conditions of service of the workmen. It must be remembered that if the transfers are made in accordance with the Standing Orders of the Company, the complainants would have no grievance or remedy even if there has been alteration in the condition of service because Section 33 (2) (*a*) empowers the employer to alter the service conditions of the workmen in accordance with the Standing Orders.

6. The important question that arises for determination is therefore, whether the transfers made in accordance with the Standing Orders. The Standing Orders of the Bharat Earth Movers, Ltd., Clause 11 relates to transfers and the relevant order is as follows :—

> " The transfer of a workman, inter-departmentally at Head-quarters is to be entirely in accordance with the exigencies of service and a workman is bound to accept the transfer when made. "

If the complainants are transferred in the exigencies of service, then they are bound to accept the transfers and cannot bring up the matter before this Tribunal. The exigencies of service mean the pressing need of the employer to transfer the services of the employee. The Management have adduced evidence to show that the retention of the complainants in the Machine Shop Department is not conducive to co-operative effort, on better production in that Department. The pressing needs or exigencies of work which necessitated the transfer of the complainants are, firstly the complainants could not carry on the work under the Shop Assistant Superintendent, Sri Subramanya Pillay, with whom there was continuous friction. Kamalakannan on one occasion exchanged hot words with his superior Officer, Sri P. V. Ramakrishnan, in respect of which a notice was issued to him as per Exhibit M-2. Sundaram was warned on one occasion for his disorderly behaviour on a complaint received from one Krishna Murthy, a fellow worker, as per Exhibit M-21. The service records of the complainants were not satisfactory. The efficiency of Kamalakannan was said to be below standard

according to the reports. These are some of the reasons which compelled the Management to transfer the services of the complainants from the Machine Shop. The Management, in my view, is justified, in view of the reasons stated, in transferring the complainants from the Machine Shop Department and such transfers are in accordance with Standing Orders.

7. The learned Counsel for the Management contended that if the transfers were made in accordance with the Standing Orders, this Tribunal cannot interfere even assuming the transfers resulted in the alteration of condition of service. That position in law seems to be correct. The complainants, however, contend that the transfers were not made in exigencies of work, but were made with some ulterior motive for the purposes of victimisation and unfair labour practice. They contend that they were actively associated with the Trade Union of the Factory and Kamalakannan had for sometime been the Secretary of the Employees' Association. In that capacity, they had to make complaints against the Shop Superintendent, about their promotions, incentive Bonus, etc., and with a view to harass them and to force them to desist from taking part in labour Union activities, the complainants stated that they have been transferred. If those contentions were true, then the transfers could not be according to the Standing Orders and this Tribunal has jurisdiction to set aside or cancel those transfers.

8. The evidence adduced by the complainants do not show that the transfers were made on account of their participation in Trade Union activities. They had not at the time of the transfers occupied any important post in the Trade Union. The representations made against their promotional vacancy as per Exhibit W-4 and about the complaint petition in Exhibit W-5 were made long before the date of transfer on 4th April 1966 and 15th March 1966 respectively. Besides, they were not individual representations but representations were made jointly along with the other employees of the Factory. There could, therefore, be no reasons for singling out these two complainants along for transfer. It is, however, common ground between the Parties that one of the reasons which necessitated the transfer is because the constant friction between the complainants and the Assistant Shop Superintendents, a friction which

is detrimental to the progress in that Department. The Management rightly believed that the retention of these two complainants in the Machine Shop Department and to make them work with Sri Subramanya Pillai with whom they are at logger heads is not desirable. Besides both of them were charge-sheeted for disorderly behaviour and their performance was also poor. In any event, it is for the complainants to establish that the transfers were not in the exigencies of work but for certain ulterior motives. In my view, the complainants have completely failed to show the existence of such ulterior motives and therefore, the transfers are according to the Standing Orders, *viz.*, exigencies of work.

9. Even assuming for a moment that the transfers were not according to the Standing Orders, *viz.*, for exigencies of work, the complainants are further to show that the said transfers have resulted in alteration of the condition of service. It is a common ground that their wages have not been altered, that their D.A. had remained unchanged, that their right to the claim of bonus, etc., continued to be the same. The complainants, however, stated that their promotion prospects have become dimmer and that they were found junior most in the seniority list of the transferred department. Even for that, there seems to be no basis because the seniority is counted from the date they joined service in the factory, no matter, in what department they are for the time being attached. As a matter of fact, Sundaram got a promotion even after he was transferred to the Mechanical Maintenance Department. According to the Management, the Seniority is not considered unless the tests are passed and only then if there are more than one workman who had to be promoted and if there is lesser number of vacancies, than those who cou'd be promoted. In any case, the changes of promotions cannot be construed as a conditions of service nor the incentive bonus. There is no separate seniority list kept for each Department as contended by the Complainants nor any such seniority list has been produced. The complainants were in fact asked to work in the same machine in the new Department as they did in the Machine Shop Department and it seems to me there could possibly be no grievance. I am not convinced that there has been any alteration in the conditions of service of the complainants. Therefore, the complainants, failed in all the grounds

that their transfer is in contravention to the Standing Orders and that there has been an alteration in the conditions of service and that is my finding on the issues 1 to 4 framed.

10. A few decisions cited by the learned Counsels of both the Parties will be of help in appreciating the facts in these two cases.

In 1960 I LLJ 556, the Supreme Court has held that transferring a cooly from one department to another is a matter of internal arrangement and the industrial tribunals should be very careful before they interfer with the orders made in the discharge of the management function in that behalf. Further it is hardly necessary to emphasize that the finding of *mala fides* could be made by industrial tribunals only after sufficient reliable evidence is led in support of it. Such finding should not be made lightheartedly or in a casual manner.

The Labour Appellate Tribunal of India in a decision reported in 1955 I LLJ 299 have made the following observations :—

> " In the absence of proof of victimization or unfair treatment it is entirely a matter for the managements to decide how the services of an emp'oyee shall be utilised. The allegation that such transfer is likely to affect his future chances of promotion must be held to be irrelevent in considering the above question, if such chances of promotion are too vague. "

The same Tribunal has observed in 1955 I LLJ 64 that transfer of a workman pending adjudication proceedings before Industrial Tribunal from one Department to another without affecting his salary but with less chances of work and overtime chances could not be considered to be the contravention of Section 33-A of the Act involving any alteration in the condition of service.

In the result, I am of the view that both the complaints are not maintainable and that there is no contravention of Section 33 of the Industrial Disputes Act, 1947, and I therefore, pass the following Award:

AWARD

Both these complaints are not maintainable for the reasons stated above and are hereby dismissed.

There will, however, be no order as to costs in the circumstances of the case.

V. C. RAMACHANDRAN,
Presiding Officer,
Industrial Tribunal,
Bangalore.

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